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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 74-9381

In Re: Petition for Rehearing and Reconsideration of Acting Commissioner's Order Discharging Anthony Lausche, Mentally Ill and Dangerous

ANTHONY LAUSCHE, PETITIONER

vs.

COMMISSIONER OF PUBLIC WELFARE
AND
COUNTY OF OTTER TAIL, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE STATE OF MINNESOTA

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January 27, 1975

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PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE STATE OF MINNESOTA

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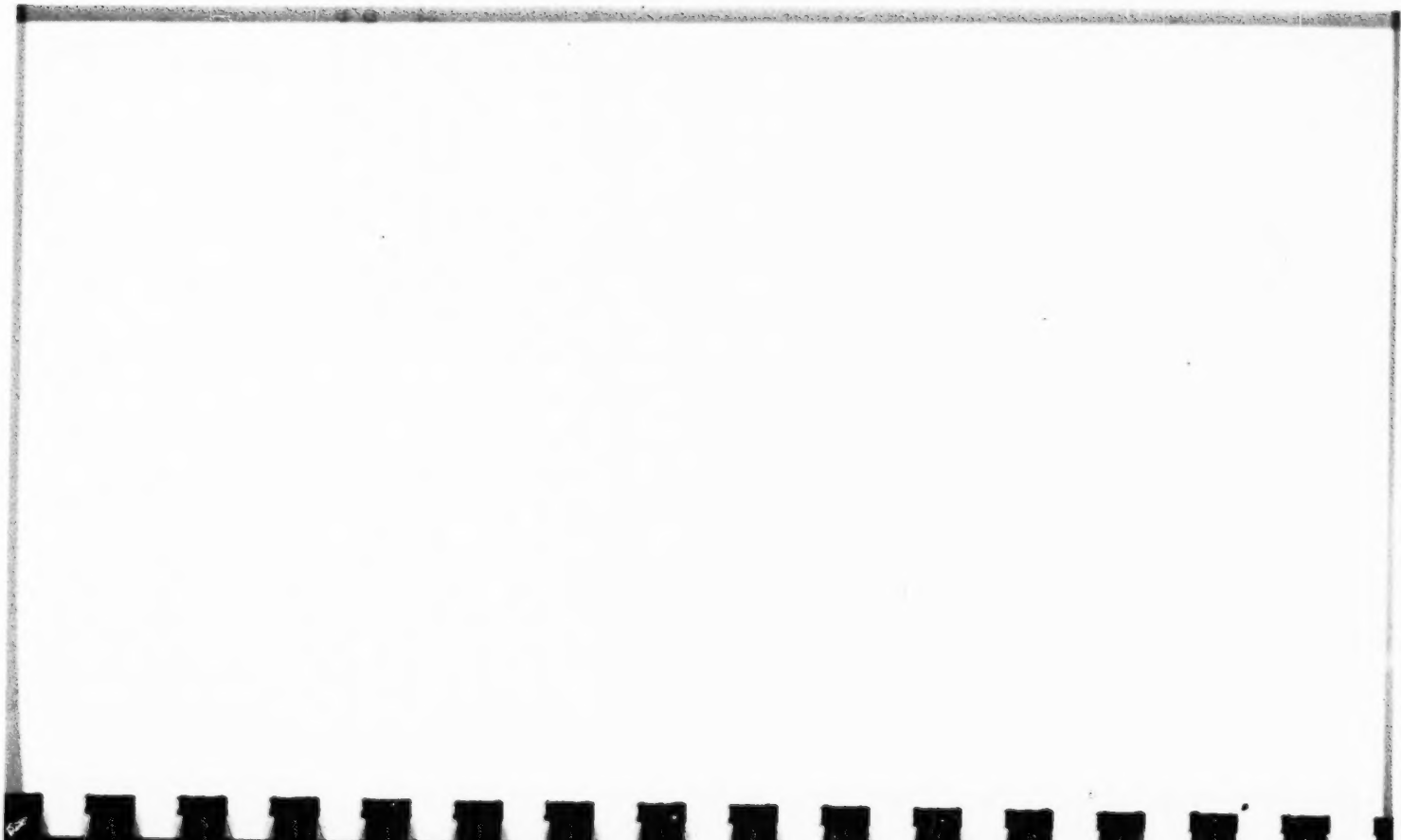
The Petitioner, Anthony Lausche, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Minnesota entered in this proceeding on November 1, 1974.



OPINION BELOW

The opinion of the Minnesota Supreme Court, not yet reported, appears in the Appendix hereto at A.1 through A.9. The Order and Opinion of the Probate Court Appeal Panel appears in the Appendix hereto at A.10 through A.15. The Findings and Order of the Special Review Board are found in the Appendix hereto at A.16 through A.17.

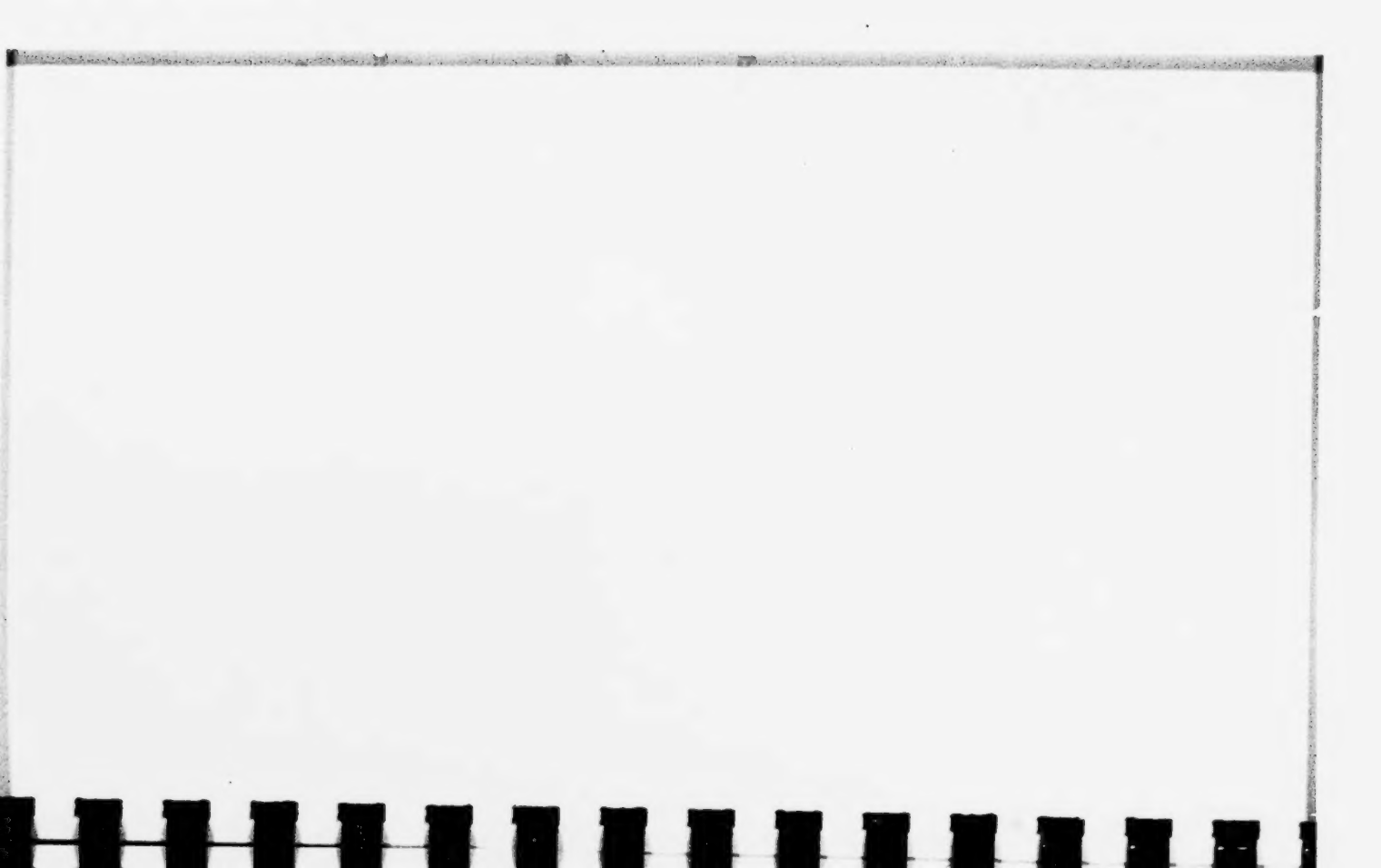
JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was entered on November 1, 1974 and this Petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Does the Minnesota Confinement Statute violate constitutional requirements when interpreted to permit the commitment of a reasonable individual solely on the grounds that such individual will be a danger to society?

2. Does the Minnesota Confinement Statute violate constitutional requirements when interpreted to apply the proof of standard of "fair preponderance of the evidence" rather than "beyond a reasonable doubt" to procedures for discharge from commitments thereunder?



STATUTORY PROVISIONS INVOLVED

Minnesota Statutes Section 253A.02 subd. 3:

"Mentally ill person" means any person having a psychiatric or other disorder which substantially impairs his mental health and who is in need of treatment or supervision.

Minnesota Statutes Section 253A.02 subd. 17:

"A person dangerous to the public" means a person who is mentally ill or mentally deficient and whose conduct might reasonably be expected to produce a clear and present danger of injury to others.

CONSTITUTIONAL PROVISIONS INVOLVED

The Consitutional provisions involved are equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States of America.

STATEMENT OF THE CASE

Petitioner, Anthony Lausche, is about 30 years of age and has been in various mental and correctional institutions since he was a teenager. His current mental condition is labeled as "sociopath" or "character disorder".

On December 19, 1969 his present commitment began when he was judicially committed to the Minnesota Security Hospital at St. Peter, Minnesota as "mentally ill and dangerous" under Minnesota Statute 253A

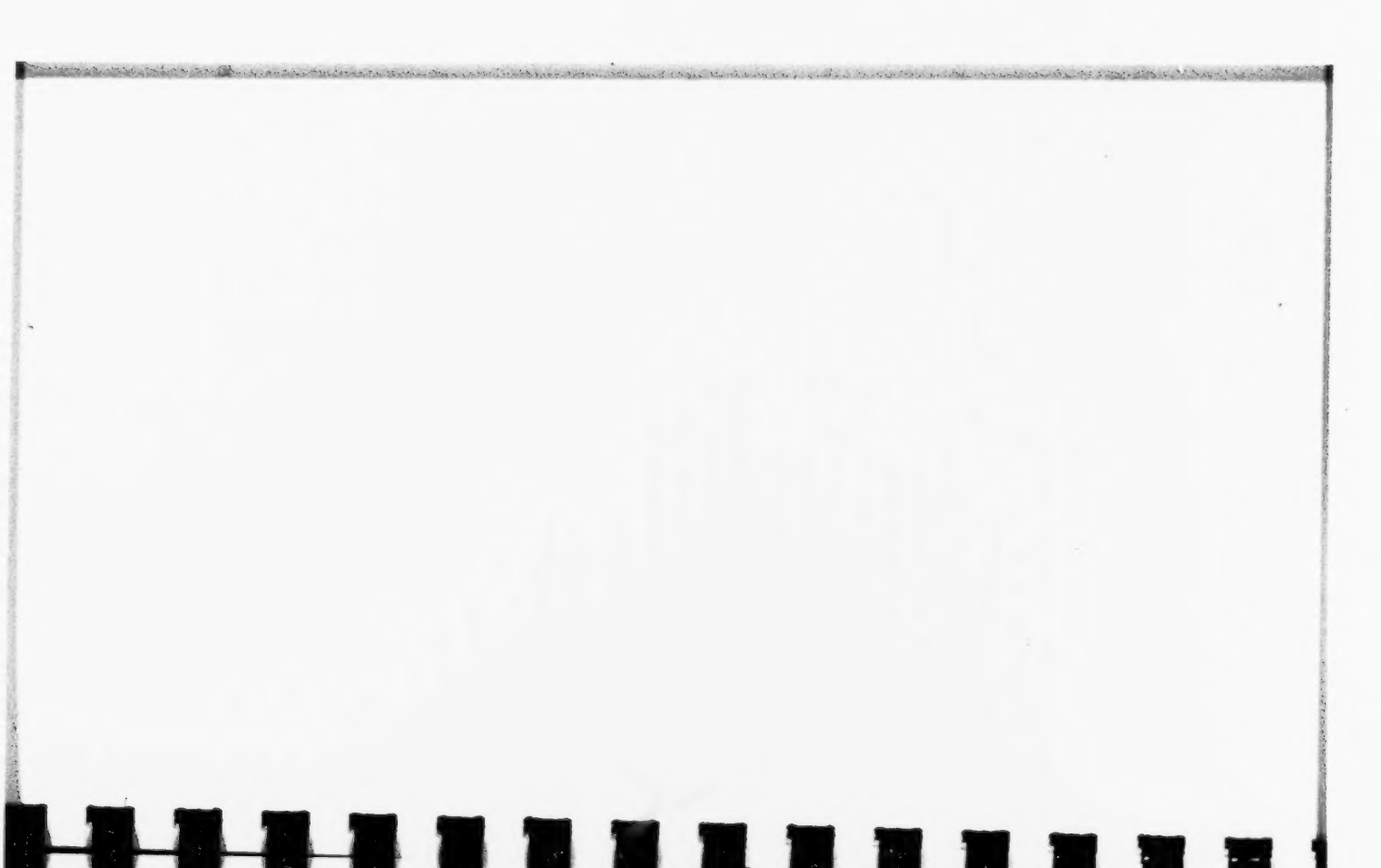
by Henry Polkinghorn, Judge of Probate Court, Otter Tail County, Minnesota.

Following the filing of the 60-day report, as required by MSA 253A.07, subd. 23, in which Dr. G. G. Sheppard, Medical Director of the Minnesota Security Hospital, stated that "it is our opinion Mr. Lausche (Petitioner) is not mentally ill", and gave a diagnosis of "personality disorder, inadequate personality", Judge Polkinghorn reconsidered his previous finding and entered a final judgment committing Petitioner to the custody of the Superintendent of the Minnesota Security Hospital at St. Peter, Minnesota, for an indeterminate period, as a person who is "mentally ill and dangerous to the public".

Petitioner remained at the Minnesota Security Hospital at St. Peter for approximately two years and was then transferred to the Brainerd State Hospital, Brainerd, Minnesota.

On February 26, 1972, at a local bar, the Vogue Dugout, Petitioner became involved in an altercation with a girl over a remark she made and assaulted her. He was charged with aggravated assault and placed in the Crow Wing County Jail.

A petition was filed for discharge from the mental commitment and pursuant to Minnesota Statutes Section 253A.15, subd. 15, a Special Review Board reviewed Petitioner's case on April 5, 1972 and made Findings of Fact that Petitioner was dangerous to society, requiring custodial care and incarceration for the rest of his



life. A decision on this petition was withheld pending disposition of the criminal charges.

Petitioner then pled guilty to the pending assault charge and was sentenced to up to five years in Stillwater State Prison, a Minnesota correctional facility.

On June 28, 1972, the Special Review Board met again and made findings to the effect that Petitioner is on a continual cycle of institutionalization and that something need be done to break this dependency cycle on institutions. They recommended complete discharge from his commitment as "mentally ill and dangerous" and that "the prison staff make all efforts to rehabilitate this man".

Pursuant to a petition for rehearing and reconsideration duly filed by Harlan L. Nelson, County Attorney, Otter Tail County, Minnesota, a three-judge appeal panel was convened and on October 18, 1972 heard additional testimony relative to Petitioner's mental commitment.

The Appeal Panel reversed Petitioner's discharge from commitment and made the following findings: That Petitioner had made improvement, but was still "mentally ill and dangerous" within the meaning of the commitment statute; that Petitioner was suffering from a defect labeled a "sociopath or a character disorder"; that Petitioner may act impulsively to do violence when subjected to stressful situations; that confinement in itself does have some effect on sociopaths; that there is a need for further programming in this

case with more emphasis on rehabilitation and vocational training. The Appeal Panel ordered that Petitioner remain in Stillwater State Prison until his release when he must be returned to the Minnesota Security Hospital at St. Peter, Minnesota.

The Supreme Court of Minnesota subsequently reviewed the Appeal Panel's decision and affirmed that decision, holding: (1) that the determinative question of whether a person should be committed to a mental hospital is whether that person, if not so committed, would be a danger to society. Considerations such as whether hospitalization would be in vain are not relevant if it is shown the person is dangerous; and (2) that the standard to be applied in a case involving a petition for release and an appeal therefrom is the civil standard of a fair preponderance of the evidence.

REASONS FOR GRANTING THE WRIT

1. The decision below raises significant questions regarding the power of the State to commit certain persons to mental institutions.

The Supreme Court of Minnesota, in interpreting the Minnesota Commitment Statute, Chapter 253A, held that the determining factor as to whether a person should be committed to the State's mental institutions is whether such person will be a danger to society. This holding raises two fundamental constitutional questions:

a. Does the State have the power to commit responsible persons who are a danger to society to mental institutions?

b. Does the State have the power to commit responsible persons who are a danger to society to mental institutions when such institutions do not offer a treatment program that will benefit the committed person?

a. Does the State have the power to commit responsible persons who are a danger to society to mental institutions?

"Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." Bates v. Little Rock, 361 U.S. 516, 524, 80 S.Ct. 412, 417 4 L.Ed.2d 480 (1960); Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

The most fundamental "personal liberty" is the right to be independent from State control in one's person and thoughts. Mental commitment deprives the individual of this fundamental liberty. Therefore, the State must have a compelling interest to justify mental commitment. The commitment statutes must be rationally related to and necessitated by such compelling statutory interest. McLaughlin v. Florida, 379 U.S. 184, 196, 85 S.Ct. 283, 290, 13 L.Ed.2d 222 (1964).

(i) The State has no "compelling interest" to commit a responsible person to a mental institution, even if that person is dangerous to society. One of the purposes of commitment statutes is to protect society. Society is adequately protected from the dangerous acts of responsible persons by the threat of or actual incarceration for the commission of those acts. A responsible person has the ability to decide whether or not to commit an act against society, and can appreciate such consequences of his acts. Therefore, to incarcerate such a responsible person in anticipation of his actions is an unjustifiable deprivation of his liberties.

(ii) Even if we assume the State has a compelling interest in committing responsible persons who are dangerous to society, it is not "necessary" that they be committed to a mental institution when they are already incarcerated in a penal institution. This Court has held that where a state acts to infringe on "fundamental liberties", such action must be "necessary" to effectuate the state's interest. See McLaughlin v. Florida, supra. It was not "necessary" for the State of Minnesota to continue the mental commitment of Petitioner when he is already incarcerated in a penal institution. While so incarcerated, he is no longer a danger to society. Further, he is receiving treatment in that institution.

If Petitioner is discharged from his commitment, society will be adequately protected. If Petitioner is a danger to

society at the time of his discharge from the penal institution, the State can then commit him to a mental institution. The present discharge from commitment may motivate the Petitioner to make an adequate adjustment in society.

b. Does the State have the power to commit responsible persons who are a danger to society to mental institutions when such institutions do not offer a treatment program that will benefit the committed person?

There are a significant number of cases which hold that our Constitution guarantees all persons committed to mental institutions the right to treatment. Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); Wyatt v. Stickney, 325 F.Supp. 781 (D.Ala. 1971); Covington v. Harris, 419 F.2d 619 (D.C. Cir. 1969); Welsch v. Likins, 373 F.Supp. 487 (D.C. Minn. 1974).

The rationale of these cases is when the State commits a person for reasons other than the commission of a particular criminal act, treatment is the only constitutionally permissive purpose of their confinement, regardless of procedural protections under the governing civil commitment statute. See Wyatt v. Stickney, 325 F.Supp. 781, 784.

This argument rests upon the Eighth and Fourteenth Amendments, relying principally upon the Supreme Court's decision in Robinson v. California, 370 U.S. 660 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). Robinson held that the cruel and unusual punishment clause prohibits conviction for a criminal offense, and concomitant

criminal incarceration solely for the "status" of being a narcotics addict. 370 U.S. at 665 through 667, 82 S.Ct. 1417.

Although the Court in Robinson focused upon the "status" as a criminal offense, 370 U.S. 660, 676, 82 S.Ct. 1417, its doctrine applies to various kinds of non-criminal incarceration based upon mere "status". See Rouse v. Cameron, supra. The Petitioner in the instant action is not being committed for any overt criminal act. He is a victim of uncontrollable "status", that is, a responsible person who is a danger to society.

If he is subject to detention for this status without a curative program, Petitioner will be within the ambit of the Robinson proscription. While Robinson turned on the Eighth Amendment, in the context of civil commitment, in the instant case it is the due process clause that would compel that minimally-adequate treatment be afforded the Petitioner. See Welsch v. Likins, supra, at page 496; Rouse v. Cameron and Wyatt v. Stickney, supra.

Statements of the Supreme Court in Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972), support this principle. There, the Supreme Court said that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed". 406 U.S. 715, 738, 92 S.Ct. 1845, 1858. A corollary is the principle of the least restrictive alternative (see Covington v. Harris, supra) which would prohibit a commitment when other means of treatment are available.

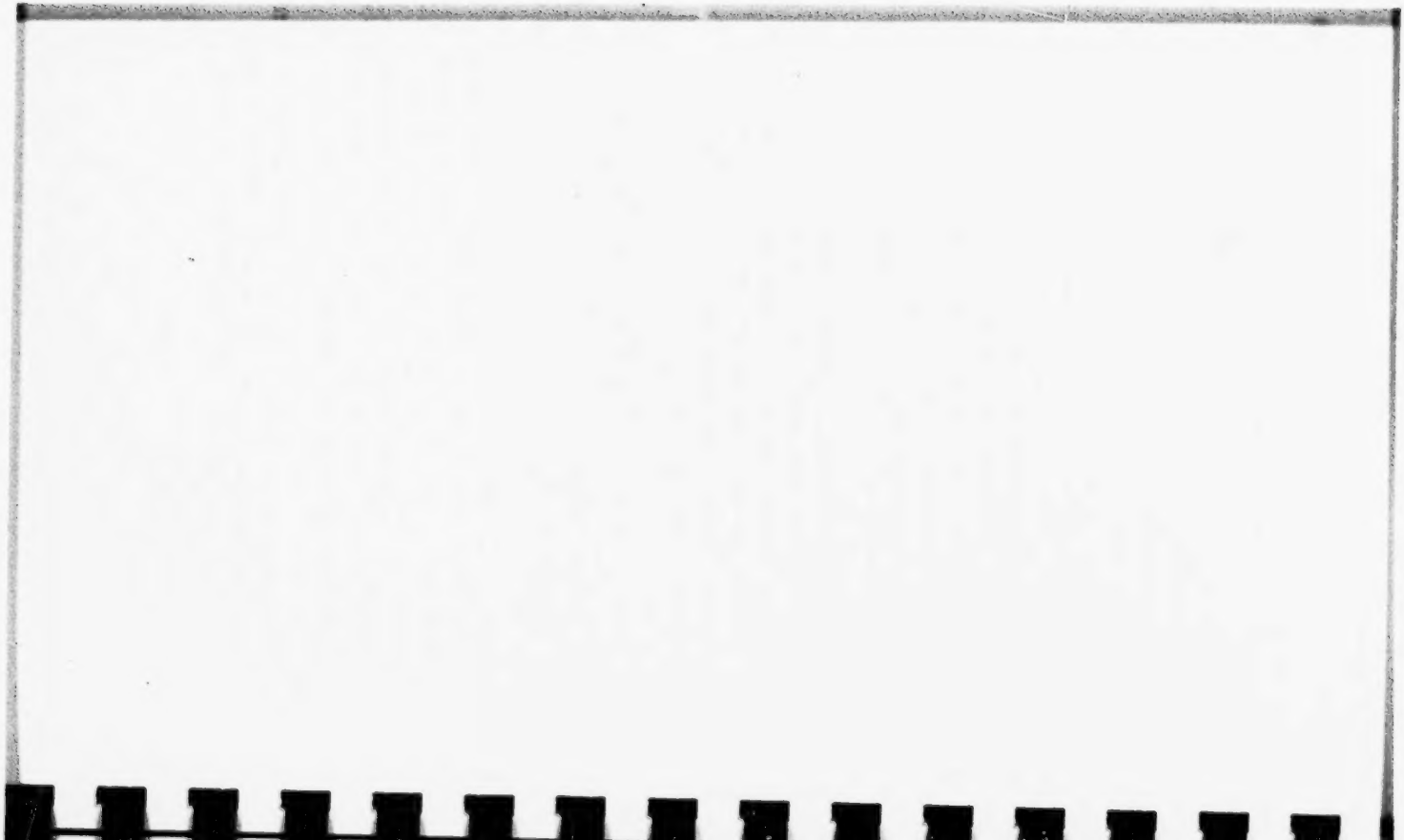
All these cited cases involved attempts to improve facilities in mental institutions. The Petitioner contends that commitment of him is itself unjusitifed without the State providing adequate treatment. The facts of this case show that Petitioner is a responsible person who has been committed by the State because he is a danger to society. The institutions to which he is committed have no programs which offer treatment to him. The indefinite commitment of Petitioner to mental institutions is the antithesis of treatment for him. Therefore, if the only justification for the State's commitment of Petitioner is to provide treatment for him, then he should be discharged from commitment.

Petitioner was being adequately and appropriately treated in a Minnesota correctional institution. Therefore, under the doctrine of the least restrictive alternative, his mental commitment should have been discharged.

2. The decision below raises significant questions with regard to the procedural safeguards of State mental commitment proceedings.

Petitioner contends that the proof standard which should have been utilized in his petition for discharge from mental commitment was that of "proof beyond a reasonable doubt" and not as held by the Minnesota Supreme Court of "by a fair preponderance of the evidence".

Apart from the area of involuntary mental commitments, a comparable massive invation by the State of the right of the



individual to life and liberty occurs only in the context of criminal or juvenile court proceedings. However, both in the criminal area and more recently in the area of juvenile courts, since In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967), strict procedural safeguards have been mandated to assure to the individual a degree of freedom from the arbitrary or illfounded invasion of his constitutional rights.

As emphasized in In re Gault, the labels of "civil" and "criminal" do not determine the limits of the breach of due process when substantial deprivations of liberty are involved.

Extending its decision in Gault, the Supreme Court in In re Winship, 397 U.S. 358, 90 S.Ct. 1058, 25 L.Ed.2d 368 (1970), held that proof beyond a reasonable doubt was required to prove every fact necessary in juvenile delinquency proceedings, noting that "extreme caution in factfinding" is necessary "because of the possibility that (the individual) may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction". (397 U.S. at 363, 90 S.Ct. 2572).

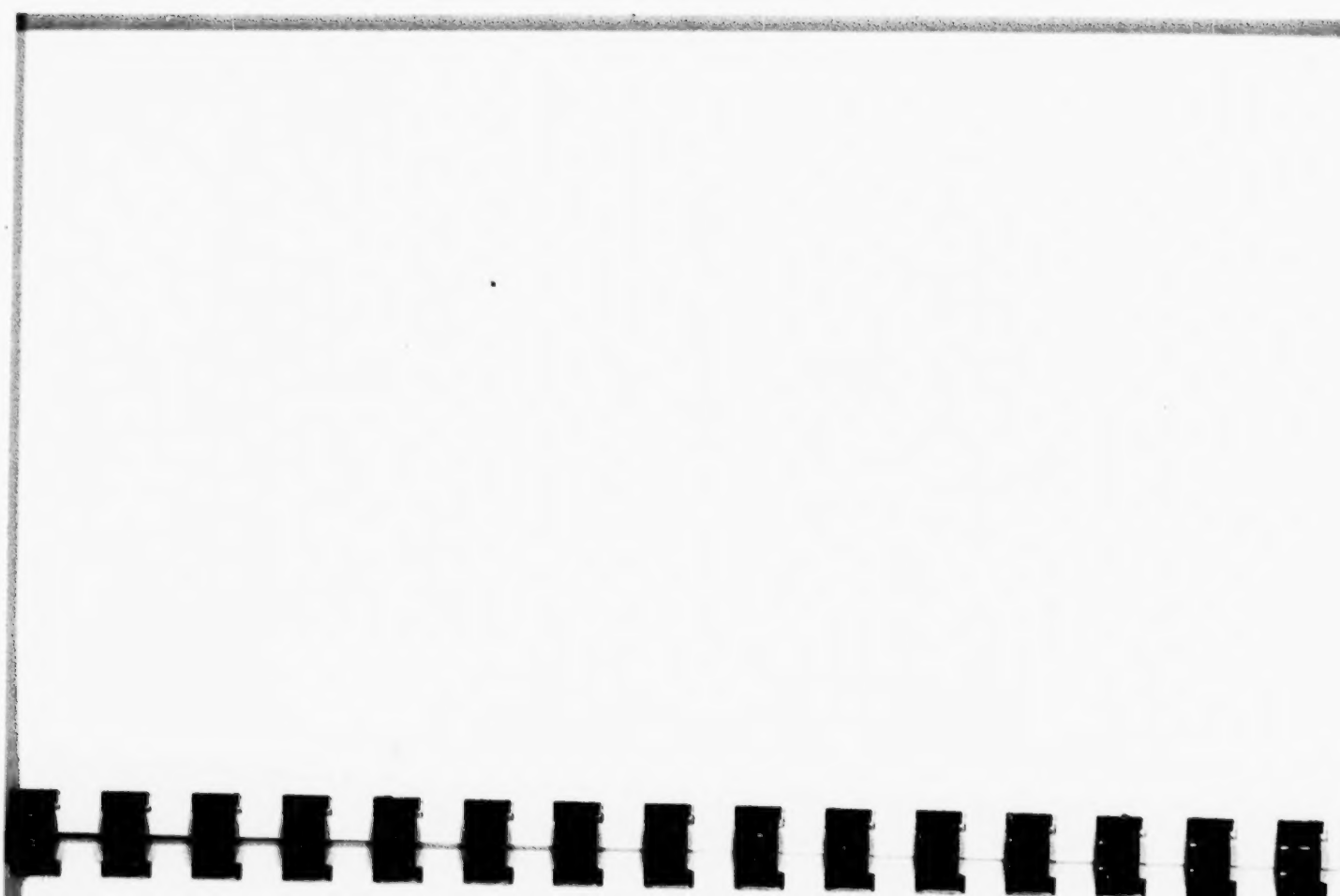
In contract to the criminal proceedings where definite legislative determinations mark the limits of sentencing discretion, a committing court is empowered under Minnesota Commitment Act to order incarceration for an individual "for an indeterminate period".

The possible deprivation of liberty in civil commitment is at least as great as in criminal and juvenile proceedings where the standard of proof is "beyond a reasonable doubt". Petitioner argues that the Constitution requires the same strict standard of proof be applied in mental commitment proceedings.

Even with regard to deportation proceedings where the possible deprivation of liberty is not nearly as great as in a mental commitment, the Supreme Court held in Woodby v. Immigration & Naturalization Service, 385 U.S. 276, 87 S.Ct. 483, 17 L.Ed.2d 362 (1966) that it is impermissible for an individual to be "banned from this Country upon no higher degree of proof than applies in a negligence case". (385 U.S. at 285, 87 S.Ct. at 487).

The case of Lessard v. Schmidt, 349 F. Supp. 1078 (D.Wis. 1972), held that the necessity for a stringent standard of proof in civil commitment proceedings exceeds the reason which prompted the Supreme Court to require proof beyond a reasonable doubt in juvenile proceedings:

> "The argument for a stringent standard of proof is more compelling in a case of a civil commitment in which an individual will be deprived of basic civil rights and be certainly stigmatized by the lack of confidentiality of adjudication. We therefore hold that the State must prove beyond a reasonable doubt all facts necessary to show that an individual is mentally ill and dangerous". 349 F. Supp. at 1095.



The Minnesota Supreme Court concedes that proof beyond a reasonable doubt is the standard to be applied in an initial commitment; however, the Court refused to extend the standard to Petitioner for discharge from commitment. It is difficult to see how one's deprivation of liberty is any less severe upon his failure to obtain a discharge from commitment than it was upon his initial commitment.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Minnesota.

Respectfully submitted,

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January 27, 1975

Probate Court Appeal Panel
No. 149
Scott, J.

In re Petition for Rehearing and Reconsideration of Acting Commissioner's Order Discharging Anthony Lausche, Mentally Ill and Dangerous.

Anthony Lausche,

Appellant,

vs. 44591

Commissioner of Public Welfare,

Respondent,

County of Otter Tail,

Respondent.

Endorsed
Filed November 1, 1974
John McCarthy, Clerk
Minnesota Supreme Court

S Y L L A B U S

1. Where expert testimony lends itself to the conclusion that the appellant "may act impulsively without justifiable provocation to commit an assault upon others and is a serious danger or threat to society unless controlled or supervised," the common meanings of the words of the statutes requiring a finding of "mentally ill and dangerous" are satisfied.

2. Treatment for mental illness comes in many forms, not always clearly medical in the common meaning of that word. Various programs and even supervision itself are property regarded as treatment.

3. The standard to be applied in this case involving a petition for release and an appeal therefrom is the civil standard of a fair preponderance of the evidence.

4. There is nothing inconsistent regarding a commitment to both the commissioner of public welfare and the Commissioner of corrections, if both are in accordance with due process. One commitment does not disturb the other.

Affirmed.

Heard before Sheran, C.J., and Kelly, Todd, Yetka, and Scott, JJ., and considered and decided by the court en banc.

OPINION

SCOTT, Justice.

This is an appeal from the order of an appeal panel dated July 3, 1973, pursuant to Minn. St. 253A.15, wherein it was ordered that the appellant, Anthony Lausche, upon release from Stillwater State Prison be returned to the Minnesota Security Hospital at St. Peter, Minnesota, and there be held under the jurisdiction of the medical director until the appellant could be released with reasonable safety under a program of supervision. We affirm.

Appellant Anthony Lausche has been in various mental and correctional institutions over a period of approximately 12 years. His present commitment commenced in 1969 when he was committed to the commissioner of public welfare as mentally ill

and dangerous and was subsequently transferred from the Minnesota Security Hospital to an open setting at Brainerd State Hospital. While in this open setting at Brainerd he assaulted a girl in a tavern, and subsequently pled guilty to a charge of aggravated assault. This resulted in his incarceration at the State Prison at Stillwater. During the incarceration a petition for his release from the commitment to the commissioner of public welfare was brought before the special review board pursuant to Minn. St. 253A.15, subd. 2(a). Following a hearing, the board recommended that appellant be discharged from his commitment as mentally ill and dangerous. The acting commissioner adopted this recommendation as his order. The county attorney of Otter Tail County then filed a petition for rehearing and reconsideration of the commissioner's order pursuant to § 253A.15, subd. 2(c). After the hearing, the panel of three probate judges reversed the commissioner's order and continued the commitment, ordering appellant to be returned to the state security hospital when his Stillwater term had been completed. This appeal was taken from that order. Minn. St. 253A.15, subd. 2(f). Since the appeal was taken, the appellant has been transferred in accordance with that order to the Minnesota Security Hospital, where he is now committed.

Three issues can be gleaned from the appellant's brief: (1) Is there evidence to support the appeal panel's determination that the appellant is mentally ill and dangerous under Minn. St. 1971, § 253A.02, subd. 3, and Minn. St. 253A.02, subd. 17? (2) What is the standard of proof and upon which party is the burden that appellant should or should not be discharged

from commitment? (3) Is the order returning the appellant to Stillwater State Prison in effect a discharge from commitment?

(1) The pertinent parts of the applicable statutes are Minn. St. 1971, § 253.02, subd. 3, which provides:

> "'Mentally ill person' means any person having a psychiatric or other disorder which substantially impairs his mental health and who is in need of treatment or supervision." (Italics supplied.)

and Minn. St. 253A.02, subd. 17, which provides:

> "'A person dangerous to the public' means a person who is mentally ill or mentally deficient and whose conduct might reasonably be expected to produce a clear and present danger of injury to others."

The appeal panel, pursuant to § 253A.15, subd. 2(c), stated as follows:

> "This tribunal finds that the patient is suffering from a mental defect psychiatrically labelled a sociopath or a character disorder. That this defect is of such a nature and intensity that he cannot control his impulse to do violence and injury to other persons or property when subjected to stressful situations requiring the exercise of emotional restraint or control. Thus, on any occasion he may act impulsively without justifiable provocation to commit an assault upon others and is a serious danger or threat to society unless controlled or supervised."

The appellant focuses upon the phrase of the above statute "who is in need of treatment or supervision" to conclude that a finding that one is mentally ill can only lead to a commitment in a mental institution for treatment. In response, the commissioner of public welfare indicates that the key to this section is satisfied by the past and present treatment afforded Mr. Lausche. He has been placed in open hospitals and in programs of rehabilitation, and he has been discharged into the community. This last-named attempt was met by appellant's commission of an aggravated assault upon a woman, for which he was incarcerated. Further attempts are still being made toward his rehabilitation into society.

Therefore, treatment for mental illness comes in many forms, not always clearly medical in the common meaning of that word. Various programs and even supervision itself are properly regarded as treatment. Minn. St. 253A.17, subd. 9. With convincing evidence of mental illness upon the record, as well as the appellant's aggravated background through many years and incidents, the appeal panel was presented with ample evidence to find the appellant mentally ill and dangerous by applying the common meanings of the words of the statutes involved, with their application to all opinions, medical and otherwise, and the other evidence before it.

We would like to strongly emphasize to all those involved in the mental commitment procedure that the ward's actual release should not be predicated upon a prevailing opinion that treatment will not help, that hospitalization would be in vain, and that therefore the ward should be released. If

the patient is judged mentally ill and dangerous, the rights of the public must be considered. Those who are a danger to the public are released at times because technically there are no medical procedures that can change their possible character disorders or other symptoms. The determining question should be: If not institutionalized, will they be a danger to society? Then, every attempt should be made either to rehabilitate in a correctional institution or to apply modern therapy, medical or otherwise, in a medical or quasi-medical institution. At the present time there is no third alternative to our penal or medical institutions for the handling of some of these unfortunate and dangerous members of society.

In the instant case, the facts as presented, evidence the multiple and varied programs available to rehabilitate the appellant. Possibly determinative is the fact that competent experts testified that if the appellant were released before the completion of his rehabilitation he might react in a dangerous manner. Therefore, a granting of the discharge at this time would create the situation of no control over a perhaps premature release. There is, therefore, ample evidence to support the findings of the appeal panel.

2. The appellant relies heavily upon the case of Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972), to support his contention that proof beyond a reasonable doubt that the appellant is mentally ill within the meaning of the statute is required before his commitment can be continued. Although this is a necessary standard to be employed with regard to the ini-

tial commitment of the alleged mentally ill person, we cannot extend it to supplementary proceedings, including petitions for discharge. Rather, we must reaffirm our holding in the case of In re Restoration to Capacity of Masters, 216 Minn. 553, 13 N.W. 2d 487 (1944), where this court was faced with an appeal from a denial of a petition for restoration to capacity. The court reversed this denial, stating:

> "The record here, however, affirmatively discloses that in arriving at its findings and conclusions the trial court placed too great a burden of proof upon the petitioners. *** That she should assume the burden of proof to establish her restoration to capacity is perfectly proper, for the law rightfully presumes that a condition of feeble-mindedness or insanity once shown to exist will thereafter continue. We recoganize that in committing the less fortunate members of society to our public institutions the courts are not penalizing them; yet a proper respect for our fundamental American concepts of liberty and freedom impels us to hold that these unfortunates have met the full measure of proof entitling them to a decree of restoration to capacity when they prove their present mental capacity by a fair preponderance of the evidence." 216 Minn. 562, 13 N. W. 2d 492.

The standard we are therefore applying in factual settings such as the one before us is the civil standard of a fair preponderance of the evidence. To apply the higher standard to these proceedings would establish a procedure in which every patient

committed as mentally ill and dangerous would require a recommitment every few months at his insistence. This was not the legislative intent as expressed in the Minnesota Hospitalization and Commitment Act, Minn. St. 1971, Ch. 253A. Nor does the appellant obtain such a right through constitutional guarantees of due process.

Inasmuch as the petition for rehearing and reconsideration was instituted by the county attorney following a discharge of the appellant's commitment by the special review board, the burden of this standard should be upon the petitioner to establish by a fair preponderance of the evidence that the condition of the party is still that which warrants further commitment as mentally ill and dangerous. That burden has been satisfied and there is ample evidence to warrant an affirmance of this continued commitment.

(3) In this case the appellant is under commitment to both the commissioner of public welfare and the commissioner of corrections. The commissioner of public welfare has the express statutory authority to transfer patients to a "suitable" institution without disturbing commitment. Minn. St. 246.14. The appellant, on the other hand, cites § 253.21 to support his contention that the commitment must be discharged. However, that statute, as interpreted, was designed to reach situations where an inmate of a prison subsequently develops a mental illness, not that set of facts presented here. See, Op. Atty. Gen., 328-A, Oct. 26, 1935; State ex rel. Guren v. Grimes, 245 Minn. 241, 71 N.W. 2d 885 (1955). Since both proceedings are in accordance with due process of law, one commitment does

not disturb the other.

Finding no further genuine issues, we affirm the appeal panel.

Affirmed.

STATE OF MINNESOTA IN PROBATE COURT

COUNTY OF RAMSEY APPEAL PANEL

In the Matter of the Petition for Rehearing and Reconsideration of Acting Commissioner's Order Discharging ANTHONY LAUSCHE, Mentally Ill and Dangerous) ORDER

The above entitled matter came duly on for hearing on October 18, 1972, at ten o'clock a.m., after continuance duly had, before the undersigned three judge panel at Room A, Fourth Floor, Centennial Building, 658 Cedar Street, St. Paul, Minnesota. That said matter was brought on for hearing on a petition made by Harlan L. Nelson, County Attorney, Otter Tail County, Minnesota, pursuant to the provisions of Minnesota Statutes Section 235A.15, requesting a rehearing and reconsideration of the Order granting discharge of said patient made by the Acting Commissioner of Public Welfare, Ove Wangensteen, dated July 3, 1972, discharging him from commitment as mentally ill and dangerous. That the Supreme Court of the State of Minnesota by its Order made by the Chief Justice, Oscar Knutson, dated May 15, 1972, appointed an appeal panel to review said matter, and appointed the undersigned judges to serve on such panel. That pursuant to the foregoing, an Order for Hearing was issued on August 4, 1973, made by Melvin J. Peterson, Judge of Probate Court of Hennepin County, Minnesota, acting in his capacity as Chief Judge of said panel, pursuant to the Order of Justice Knutson.

Harlan L. Nelson, Esq., County Attorney, Otter Tail County, Minnesota, appeared on behalf of the County of Otter Tail, Minnesota; Benjamin J. Smith, Esq., appeared on behalf of said Anthony Lausche; and Tibor M. Gallo, Esq., appeared on behalf of the Commissioner of Public Welfare.

The undersigned judges having duly considered the evidence adduced at said hearing, and upon all the files, records and proceedings herein, now makes the following FINDINGS and ORDER:

1. That said ward is still mentally ill and dangerous within the statutory meaning of Section 253A.02 Subd. 17 as of the date of hearing. That some improvement in his condition is indicated, but a great reliance on such indication cannot be placed in view of the ward's long history of misbehavior and violent tendencies following periods of remorse, improvement and promise. That the mental condition existing at the time of the original commitment still persists. That said commitment was made on December 19, 1969, and yet while still under commitment the ward repeated his violent conduct in February, 1972, resulting in a sentence to Stillwater which he is now serving. That the ward entered a plea of guilty to the charge for which sentenced, and no disposition was made by full trial and determination by a jury or trier of fact as to the patient's sanity or lack thereof at the time of the act of violence. Therefore, little if any weight can be given to a determination of guilty which was made in such uncontested

criminal proceedings, as his state of mind was not put in issue in any adversary manner.

This tribunal finds that the patient is suffering from a mental defect psychiatrically labeled a sociopath or a character disorder. That this defect is of such a nature and intensity that he cannot control his impulse to do violence and injury to other persons or property when subjected to stressful situations requiring the exercise of emotional restraint or control. Thus, on any occasion he may act impulsively without justifiable provocation to commit an assault upon others and is a serious danger or threat to society unless controlled or supervised.

That during the time that the ward has been serving a sentence at Stillwater State Prison, certain programs of treatment have been initiated with some apparent success, but with unpredictable consequences as to long-range rehabilitation. That the major deficiency in the patient's character is frustration tolerance which must be engendered in some way if the patient is to be safely released into society on his own. Every day every member of society must experience a certain amount of frustration in varying degrees, and all must exercise control or be in serious trouble. This the ward must learn. Alcohol appears to lower his tolerance and its consumption by him is not desirable. Underlying sex problems exist, expressed in part by his attitude towards women. The present programs would seem to be beneficial to the ward, but the Court feels that the ward must be under some

long-range supervisory arrangement or sustained confinement would appear proper. Accordingly, this tribunal has not seen fit to make an immediate release until further experience has been indicated in confinement. At this time, it would appear that with appropriate response on the part of the ward, he could be placed in a controlled environmental setting. Whether this can be done by Corrections or by mental institutional care is not material. At the present time, this is available to some degree through Corrections, and should be kept available, despite the fact that the patient has an underlying mental problem. Competition between correctional programs and mental health programs should not exist, and the same program should be available through either method to prevent institutional shopping by lawyers and other persons having duties to perform in this area. Uniformity of programs must be available for persons having like problems, and cooperation between our institutions is absolutely necessary to attain public confidence and to achieve desired goals of rehabilitation, to the end that persons with mental problems can be returned with a degree of safety to the community. Accordingly, the panel is of the opinion that it cannot affirm the findings and order of the Review Board, which must be modified to provide a continuation of the Order of Commitment as mentally ill and dangerous. It appears that the conviction for assault entered on a plea of guilty had too much influence on the Review Board, and is in no way an adjudication of the ward's actual state of mind. The fact that such patients are difficult to deal with cannot change the legislative direction to

confine such persons for treatment, though the treatment be difficult and improvement hard to discern. Studies show that confinement in itself does have some effect on sociopaths, and with the assistance of some treatment form, it tends to slowly bring about a change of attitude, as age and maturity are gradually achieved, although in some instances, this may never occur. Such change we must seek to achieve with reasonable safeguards to the public.

There is need for further programming in this case with more emphasis on rehabilitation and vocational training. The panel is of the opinion that the State should place more emphasis on these points. Better vocational training is needed in our state institutions, and the Commissioner has a duty to provide such training to carry out the legislative purpose of treatment wherever possible.

NOW, THEREFORE, IT IS ORDERED:

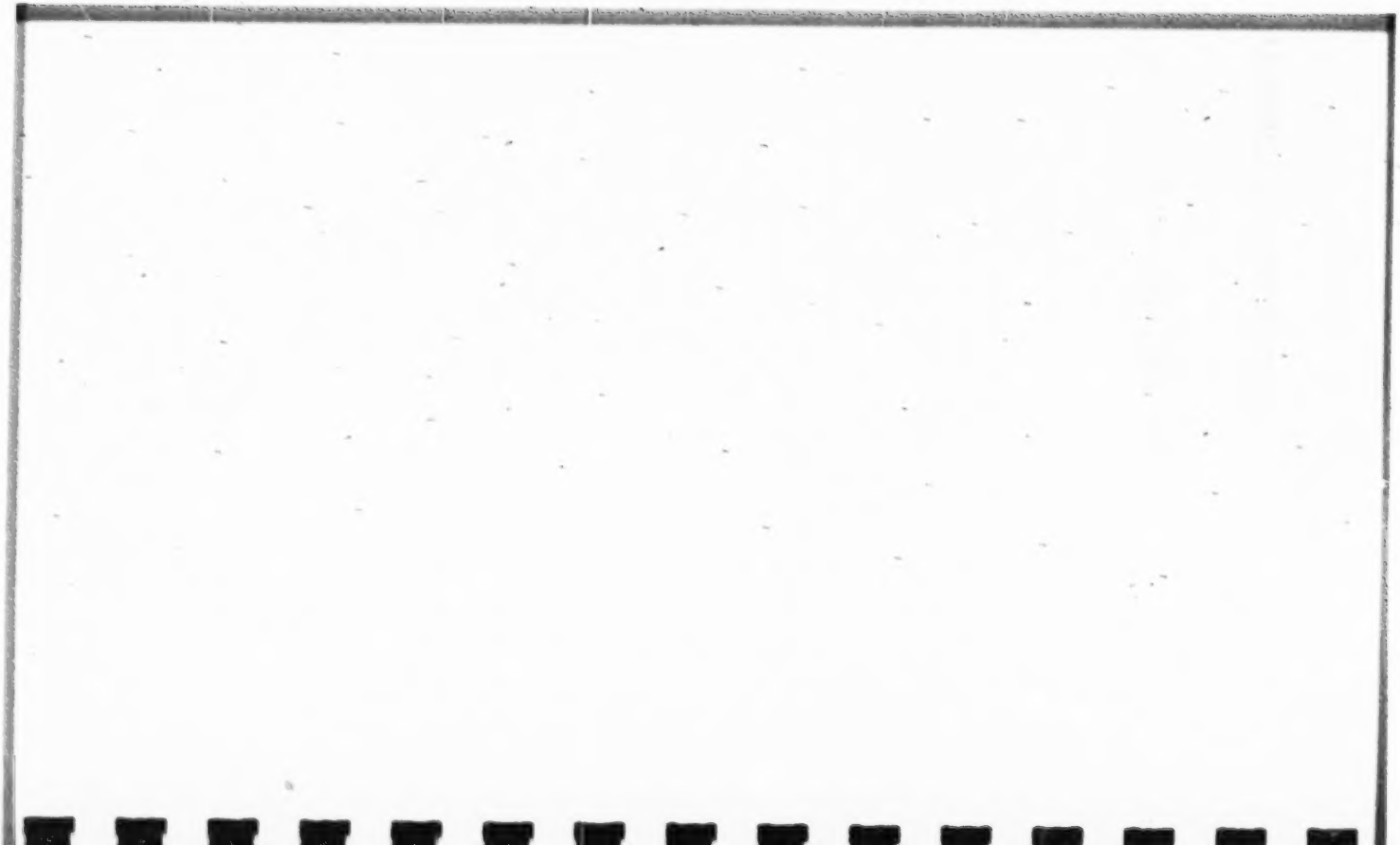
That the Order of the Review Board dated July 3, 1972, is hereby reversed and the following Order substituted in its place and stead, namely: That the ward upon release from the Stillwater State Prison must be returned to the Security State Hospital at St. Peter, Minnesota, and there to be held under the jurisdiction of the Medical Director until the ward can be released with reasonable safety under a program of supervision.

Dated this 3rd day of July, 1973.

/s/ Melvin J. Peterson

/s/ Robert V. Campbell

/s/ John Lang



STATE OF MINNESOTA
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55101

Petitioner Anthony Lausche a patient at the Minnesota State Prison appeared before the Special Review Board pursuant to MSA 253A. 15, subd. 15 as amended by Laws 1971, Chapter 262 on June 28, 1972. The original hearing which was held on April 5, 1972 was continued and brought to the attention of the Review Board again, for further action. Board members were:

Mr. William Kampf, Chairman
Mr. Robert Spano

Also present at the hearing were:

James Duffey, Correctional Officer
Dr. Charles Sheppard
Mr. Dwight Dixon
Mrs. Marlis Funke

Evidence was presented and said Special Review Board hereby makes the following findings of fact:

1. That the findings alleged in the petition are true.

2. That Mr. Lausche is on a continual cycle of going in and out of institutions.

3. That in accordance with the findings of all of the staff of the institutions that have dealt with him, he is thoroughly insti-

tutionalized, whether it be a correctional or mental health institution and that something needs to be done to break this dependency cycle on institutions.

4. That unless some change in status is made, this cycle will continue for the balance of his life.

5. That during the period he will reside in a correctional institution, namely Stillwater State Prison, an open ended situation at the conclusion of his sentence may lead him to seek some therapy with regard to getting back into society.

6. It is recommended, therefore, that the prison staff make all efforts to rehabilitate this man toward his being capable of living in society and of being a working member of society.

7. We further recommend complete discharge at this time, from his commitment as mentally ill and dangerous in view of all the circumstances as mentioned before.

ORDER

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, that:

1) Anthony Lausche be granted a complete discharge from his commitment as mentally ill and dangerous.

July 3, 1972
Dated

/s/ Ove Wangensteen
Ove Wangensteen, Acting Commissioner